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Before the
Federal Communications Commission
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In re application of:	)	
	)	
WORLDCOM, INC , and its Subsidiaries as DEBTOR IN POSSESSION	)	
Transferor	)	
	)	
AND	)	WC Docket 02-215
	)	
MCI, INC., and its Subsidiaries	)	
Transferee	)	
	)	
For consent to transfer of control of licenses and authorizations held by WorldCom in bankruptcy	)	

To: The Commission

FIFTH SUPPLEMENT TO
PETITION TO DENY TRANSFER OF LICENSES,
AUTHORIZATIONS, AND CERTIFICATIONS
OF WORLDCOM, INC.

Margaret F. Snyder, by her attorneys, hereby supplements her petition to deny the above referenced applications for transfer of control of WorldCom, Inc.'s ("WorldCom") licenses, authorizations and certifications.

On October 10, 2003, and October 15, 2003, WorldCom, through counsel, filed two letters in the above referenced proceeding, attached hereto as Exhibits 1 and 2. The letters summarize *ex parte* meetings with members of the FCC's staff. The letters, however, contain a paucity of information. For example, WorldCom's October 10, 2003 letter, in one short sentence, details a meeting between Donna Sorgi, Senior Vice President – Federal Advocacy of WorldCom and Mathew Brill, Senior Legal Advisor to

Commissioner Kathleen Q. Abernathy. The only information provided is, "In the course of the meeting, representatives for MCI urged the Commission to approve the license transfer applications pending in the above-referenced proceeding."

Section 1.206(b)(2) of the Commission's rules, which governs oral presentations in permit-but-disclose *ex parte* presentations, requires parties making an *ex parte* presentation to submit a detailed memorandum containing "a summary of the substance of the *ex parte* presentation and not merely a listing of the subjects discussed." Section 1 1206(b)(2) continues, "More than a one or two sentence description of the views and arguments presented is generally required."

In making its *ex parte* filings, WorldCom failed to comply with the requirements of Section 1.1206(b)(2) of the rules. The public and Mrs. Snyder have been denied the right to review a detailed abstract of the *ex parte* presentations made by WorldCom. WorldCom should be required to amend its Section 1.1206 (b)(2) *ex parte* memorandum by providing a specific and detailed summary of what was discussed at its meetings with the FCC's staff.

WorldCom's conduct has placed Mrs. Snyder at a disadvantage. Mrs. Snyder does not know what was discussed or if there is a need for her to rebut the arguments WorldCom made behind closed doors. WorldCom has subverted the FCC's permit-but-disclose procedure, turning it into a private lobbying effort. The Commission considers this type of behavior an abuse of process, which reflects on the licensee's character.[1] The term "abuse of process" has been defined as "the use of a Commission process, procedure

[1] See, *Policy Regarding Character Qualifications*, ("*Character Policy Statement*") 102 FCC 2nd 1179 (1986) (strike pleadings, harassment of opposing parties, and violation of *ex parte* rules constitute abuse of process).

or rule to achieve a result which that process, procedure or rule was not designed or intended to achieve or, alternatively, use of such process, procedure, or rule in a manner which subverts the underlying intended purpose of that process, procedure, or rule."[2] Clearly, WorldCom has subverted the Commission's permit-but-disclose process. It has had its meetings with the Commission's staff, but has refused to disclose the details of what had been discussed.

WorldCom's conduct falls into an all too familiar pattern. The new WorldCom has demonstrated an amazing willingness to violate the FCC's rules and regulations. More than just technical violations, new WorldCom's infringements of the Commission's rules all involve intentional concealment or deception. For example, in failing to amend its applications to disclose that it has been criminally indicted, WorldCom has repeatedly violated Section 1.65 of the Commission.[3] WorldCom has failed to disclose the existence of settlement agreements in violation of Section 1.935(c) of the rules.[4] This very type of intentional concealment and failure to disclose permitted Worldcom to perpetrate the greatest accounting fraud in history.

WorldCom, as its sole mitigating factor, claims that it has cleaned house, that it has fired or accepted the resignation of "every employee accused . . . of having perpetrated the fraud, and terminated even those employees who, while not accused of personal misconduct, are alleged to have been insufficiently attentive in preventing the

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[2] *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuse of the Renewal Process, First Report and Order,* 4 FCC Rcd 4780, 4793 n 3 (1983)

[3] See, *Third Supplement to Petition to Deny Transfer of Licenses Authorization, and Certifications of WorldCom, Inc.* filed October 8, 2003.

[4] See, *Fourth Supplement to Petition to Deny Transfer of Licenses Authorization, and Certifications of WorldCom, Inc* filed October 15, 2003

fraud."[5] Has the leopard changed its spots? More to the point, are the same employees still employed by WorldCom that participated in the fraud or stood by insufficiently attentive while WorldCom's shareholders, like Mrs. Snyder, were being robbed? The available evidence indicates that WorldCom still employs many of these persons. Only now they are busy concealing information about *ex parte* meetings with the FCC staff, failing to update WorldCom's pending applications in violation of Section 1.65 of the rules, and entering into secret settlement agreements. WorldCom claims that anyone involved including the "insufficiently attentive" have been fired or forced to resign. Yet there is a growing body of evidence that the employees that betrayed WorldCom's shareholders are still employed by WorldCom.[6]

On March 31, 2003, the Special Investigative Committee of the Board of Directors of WorldCom issued a 345 page Report of Investigation. The Report finds numerous persons to blame, but none of the blame is attributed to WorldCom's current employees. WorldCom unequivocally claims that it no longer employs any of the people whose conduct was responsible for the accounting fraud.

WorldCom's current management blames former CEO Bernard J. Ebbers, former CFO Scott D. Sullivan and other top managers. While these were certainly the key

[5] *Reply Comments of WorldCom, Inc in Support of Applications,* p 4, filed August 18, 2003.

[6] WorldCom's argument focuses on its claim that it replaced the board of directors and certain top managers This alone, however, cannot exonerate WorldCom of the fraud it has committed. Nor can the filing of a petition in bankruptcy absolve it of its repeated violations of the FCC rules and policies. If the Commission accepts this argument, it will set a precedent permitting future corporate scoundrels to escape the consequences of their actions by merely replacing a few guilty managers. Such a decision would permit large entities and publicly traded corporations to retain their licenses, despite any fraud they may have committed, and would only place entities owned or controlled by individuals or a small group of investors in jeopardy of losing their licenses. Such a decision would violate the mandate of *Melody Music v. F.C C*, 120 U S App. D C. 241, 345 F 2d 730, 732 (D.C Cir. 1965), by treating similarly situated parties differently. Replacing top management is a mitigating factor, which in the crucible of a hearing should be considered by the Administrative Law Judge, along with other factors that weigh in favor of or against WorldCom retaining its licenses and authorizations. By no means can it be the sole determining factor, as WorldCom claims

players, clearly others, still employed by WorldCom, significantly participated in the corporate fraud that led to WorldCom's bankruptcy and the loss of billions of dollars of shareholder funds. One paragraph in the report under the heading "WorldCom's Culture" sheds some light. WorldCom' Special Investigative Committee admits:

> Numerous individuals – most of them in financial and accounting departments, at many levels of the Company and in different locations around the world – became aware in varying degrees of senior management's misconduct. Had one or more of these individuals come forward earlier and raised their complaints with Human Resources, Internal Audit, the Law and Public Policy Department, Anderson, the Audit Committee, individual Directors and/or federal or state government regulators, perhaps the fraud would not have gone on for so long. Why didn't they?

Why indeed? Mrs. Snyder has spent a significant amount of time considering this very question. For a retired schoolteacher who spent her career teaching children the difference between right and wrong, it is hard to believe that not one of the numerous WorldCom employees who knew of the ongoing fraud said anything to warn the public. Why did none of these employees say anything? The answer is, they were well paid for their silence.

In August 2003, Richard C. Breeden, Corporate Monitor, issued a report to the Honorable Jed S. Rakoff, the United States District Court for the Southern District of New York.[7] The report entitled *Restoring Trust* provides 78 recommendations designed to improve the corporate governance of WorldCom. Under the section entitled "Abusive Compensation Practices" *Restoring Trust* discusses WorldCom's use of 238 million dollars in "retention grants." According to the *Restoring Trust*, CEO Ebbers and CFO

[7] *Restoring Trust*, Report to Hon Jed S Rakoff, The United States District Court for the Southern District of New York, On Corporate Governance for the Future of MCI, Inc Prepared by Richard C Breeden, Corporate Monitor. ("*Restoring Trust*")

Sullivan were "allowed to pay out whatever they wished to favored and especially loyal employees within the Company. Not surprisingly, this program gave Ebbers and Sullivan an even greater ability to buy personal loyalty at a time when the fraudulent reporting was growing substantial. Buying the loyalty or silence of people who might potentially discover and reveal improper practices is a fairly common element of most major frauds."[8] As *Restoring Trust* unequivocally states, "The retention program was in effect a giant compensation slush fund."[9]

Why did WorldCom employees who knew about the fraud keep quiet? Because, WorldCom's employees had accepted money in return for their cooperation and silence. Their pockets stuffed with shareholders' money, WorldCom employees silently watched or participated in the preparation and filing of fraudulent reports with the Securities and Exchange Commission and the FCC.

How many WorldCom employees took hush money? How many of these employees still work at WorldCom today? WorldCom has the answers to these questions, but has chosen not to disclose this information. Instead of providing actual data, WorldCom makes the unsubstantiated claim that only a handful of employees knew of or participated in the fraud. These employees, according to WorldCom, have been fired or forced to resign.

In truth, how many employees actually knew about the fraud and kept quiet? WorldCom has 50,000 employees. Many of these employees are engineers, technicians, operators, sales personnel or office staff. They would have no way of knowing about the fraud. This information would have been available to senior and mid-level management.

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[8] *Restoring Trust* at p 28-9 (footnote included)

[9] *Id.* p 2

Did 100 people in the company know about or participate in the fraud? 500 people? 1000 people? Assuming that the WorldCom managers who knew or participated in the fraud each received a $50,000 retention payment, this would mean that 4,760 of WorldCom's management level employees could have been paid for their silence.[10] Under this formula, as many as one in 10 employees could have been paid to keep quiet or to participate in the fraud. In a company with 50,000 employees, this would mean that anyone with any possible knowledge of the ongoing fraud was paid off. Where did these thirty pieces of silver come from? The money, certainly, did not come from WorldCom's corporate earnings, for at the time WorldCom was teetering on the verge of bankruptcy. The money came from the bank accounts of WorldCom's shareholders like Mrs. Snyder. While robbing its shareholders, WorldCom used shareholder money to buy the silence of its employees and managers. These are the same employees and managers that are now before the FCC arguing that the revocation of WorldCom's licenses and authorizations would cause them to lose their jobs.

WorldCom has failed to present any evidence that would justify its remaining an FCC licensee. On the contrary, every bit of available evidence as well as Commission and Court precedent requires the revocation of WorldCom's operating authority. WorldCom has committed fraud before the SEC and the FCC. WorldCom has made material misrepresentations to the FCC. It has been criminally indicted and its top managers have either pled guilty or are in the process of being criminally tried. WorldCom's conduct has caused serious and irreparable damage to members of the public. WorldCom's sole mitigating factor for its fraudulent and criminal behavior is its

[10] $50,000 X 4760 = $238,000,000.

unsubstantiated claim that it has replaced all the managers and employees that were involved in the criminal and fraudulent behavior or who were "insufficiently attentive" to what was going on around them. No evidence in the record before the FCC supports this statement. In fact, the available evidence contradicts WorldCom's claims to having cleaned house. Rather than candidly present its mitigating evidence to the Commission, the new WorldCom has attempted to cast the Commission into the role of a modern Diogenes tasked with the responsibility of finding an honest WorldCom employee.[11]

The new WorldCom, renamed MCI in an attempt to conceal its fraudulent corporate history from the public, has shown an amazing propensity to violate the FCC's rules. These rule violations all center on WorldCom's desire to conceal information, including its most recent violation of the *ex parte* reporting requirements under Section 1.1206(b)(2) of the Commission's rules.

Accordingly, in addition to any other issues concerning WorldCom's character qualifications, the FCC should designate an issue to determine whether WorldCom has violated Section 1.1206(b)(2) of the Commission's Rules by failing to properly report permit-but-disclose *ex parte* contacts with the FCC's staff. Moreover, Ms. Snyder requests that the Commission order WorldCom to file detailed summaries of any and all communications, meetings or conservations WorldCom has had had with the Commission's staff in the above referenced proceeding.

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[11] Diogenses of Sinope was a Greek philosopher. He is said to have walked through Athens with a lantern in the daytime looking for an honest man.

Respectfully submitted,

By: Arthur V. Belendiuk
Counsel to Margaret F. Snyder

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November 6, 2003

EXHIBIT 1

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October 10, 2003

BY ELECTRONIC DELIVERY

Marlene Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Ex Parte

Re: Applications for Consent to Assign and/or Transfer Control of Licenses and Authorizations Filed by WorldCom, Inc. (Debtor-in-Possession) and MCI, Inc., WC Docket No. 02-215

Dear Ms. Dortch:

Yesterday, Donna Sorgi, Vice President – Federal Advocacy for MCI and the undersigned, counsel for MCI, met with Matthew Brill, Senior Legal Advisor to Commissioner Kathleen Q. Abernathy. In the course of that meeting, representatives for MCI urged the Commission to approve the license transfer applications pending in the above-referenced proceeding.

Pursuant to the Commission's rules, 47 C.F.R. § 1.1206(b)(2), this letter is being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

/s/ A. Richard Metzger, Jr.

A. Richard Metzger, Jr.

cc: Matthew Brill

EXHIBIT 2

LAWLER, METZGER & MILKMAN, LLC

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October 15, 2003

BY ELECTRONIC DELIVERY

Marlene Dortch, Secretary
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Washington, D.C. 20554

Ex Parte

Re: Applications for Consent to Assign and/or Transfer Control of Licenses and Authorizations Filed by WorldCom, Inc. (Debtor-in-Possession) and MCI, Inc., WC Docket No. 02-215

Dear Ms. Dortch:

On October 14, 2003, Donna Sorgi, Vice President – Federal Advocacy for MCI and the undersigned, counsel for MCI, met separately with Lisa Zaina, Senior Legal Advisor to Commissioner Adelstein, and Jessica Rosenworcel, Legal Advisor to Commissioner Copps. In the course of those meetings, Ms. Sorgi reviewed the status of the applications in the above-referenced proceeding and, consistent with MCI's prior written submissions in this docket, urged the Commission to approve the pending license transfers.

Pursuant to the Commission's rules, 47 C.F.R. § 1.1206(b)(2), this letter is being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

/s/ A. Richard Metzger, Jr.

A. Richard Metzger, Jr.

cc: Jessica Rosenworcel
Lisa Zaina

CERTIFICATE OF SERVICE

I, Sherry Schunemann, do hereby certify that a copy of the foregoing "Fifth Supplement to Petition to Deny Transfer of Licenses, Authorizations, and Certifications of WorldCom, Inc." was mailed by First Class U.S. Mail, postage prepaid or via email, this 6th day of November, 2003, to the following:

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